



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCC/156360

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 24, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Racine County Department of Human Services in regard to Medical Assistance, a hearing was held on April 22, 2014, at Racine, Wisconsin.

The issues for determination are whether the Department correctly discontinued Petitioner's BadgerCare+ Core eligibility as the program was discontinued and denied eligibility for the new BadgerCare+ childless adult program because of income in excess of income limits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Rhonda Kramer

Racine County Department of Human Services  
1717 Taylor Ave  
Racine, WI 53403-2497

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Racine County.
2. Petitioner's household consists of himself and his spouse.
3. Prior to April 2014, Petitioner received health insurance benefits through the State's BadgerCare+ Core program. That program was discontinued as of March 31, 2014 and Petitioner's BadgerCare+ Core eligibility was discontinued with the discontinuance of the program.
4. Petitioner was not eligible for the new BadgerCare+ program for adults without a child in the household as household income was determined to be in excess of 100% of the Federal Poverty Level.

5. Petitioner's household income consists of \$1492.00 of Social Security, \$64.55 of a pension and \$913.90 (before premium deduction) of Social Security Disability Income. This totals \$2470.45.
6. 100% of the Federal Poverty Level (FPL) for a group size of two is \$1310.83.
7. On February 21, 2014, the Department issued written notice to Petitioner advising that BadgerCare+ Core was ending as of April 1, 2014 and suggesting that he might seek health insurance through the Federal Health Insurance Marketplace (aka the Exchange). Petitioner timely appealed.

### **DISCUSSION**

Petitioner had been receiving Medicaid under the BadgerCare+ Core Plan, which expanded medical assistance coverage to persons between 18 and 64 years old whose income is less than 200% of the federal poverty level and who do not have any children under 19 years old. *BadgerCare+ Eligibility Handbook (BEH)*, § 43.2. The program ended as of April 1, 2014. *See BEH*, §43.1.

BadgerCare+ is a Wisconsin variant of the Medicaid program, for non-elderly, non-disabled Wisconsin residents. The program's nonfinancial eligibility standards were broadened effective April 1, 2014, to include adults who do not have minor children in their home. *Wis. Stat. § 49.45(23)*; *2013 Wisconsin Act 116, § 29, for effective date*; *BadgerCare+ Eligibility Handbook (BEH)*, § 2.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm>. Petitioner meets the nonfinancial eligibility tests for the program. Nonetheless, Petitioner must also pass an income test.

To be eligible for BadgerCare+ an adult cannot have adjusted gross income exceeding 100% of the federal poverty level (FPL). *Wis. Stat. § 49.45(23)(a)*; *BEH*, § 16.1. The 100% FPL amount is \$972.50 monthly for a household of one, and \$1,310.83 for a household of two persons in 2014. *Id.*, § 50.1.

The agency has calculated a gross income amount for Petitioner in the amount of \$2470.45 as noted at Finding # 5. Social Security Income is counted unless it is SSI. *BEH*, §§16.1.2, 16.1.3 and 16.3.1. There are new rules on counting income; MAGI - Modified Adjusted Gross Income rules. *See BEH*, §16.1. MAGI rules are used to determine BadgerCare+ eligibility for new applicants beginning in 2014 and for existing members as of March 31, 2014 or their next regularly scheduled renewal, whichever is later. MAGI rules consider taxable income. From gross income, the Department is allowed to subtract only those income tax deductions listed on lines #16 - #19 of the Federal 1040A tax return, subject to modifications listed at 42 C.F.R. § 435.603(e). There is nothing here to suggest that even if these Magi rules are used the income would be under the \$ 1310.83 limit.

Petitioner is currently undergoing chemotherapy for cancer and contends that it is not fair to discontinue benefits during this treatment. The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. It cannot change the law terminating the BadgerCare+ Core program or the law establishing the new BadgerCare+ financial eligibility criteria.

Finally, the agency representative indicated that Petitioner was provided with an elderly, blind or disabled Medicaid application but it had not been returned as of the date of the hearing. Petitioner may wish to consider applying for this Medicaid program if he has not done so already.

### **CONCLUSIONS OF LAW**

1. That Petitioner's household income is in excess of the applicable FPL limit applicable here - \$1383.10.
2. That the agency correctly discontinued Petitioner's BadgerCare+ Core and denied eligibility for the new BC+ childless adult program.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of June, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 6, 2014.

Racine County Department of Human Services  
Division of Health Care Access and Accountability